

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Amir Gluck

Serial No:

10/681,758

Filed:

10/08/2003

For:

IXI Mobile (R&D) Ltd.

Art Unit: 2618

Examiner: Phu, Sanh D

Confirmation No. 8302

RESPONSE TO RESTRICTION REQUIREMENT

Mail Stop Restriction
Commissioner for Patents
PO BOX 1450
Alexandria, VA 22313-1450

Dear Sir:

The time to respond has been extended by three months pursuant to 37 CFR 1.136 by the virtue of the accompanying payment. Payment in the amount of **\$1,020** to cover the extension fee is enclosed. The Commissioner is hereby authorized to charge any deficiency for the following fees associated with this communication or credit any overpayment to Deposit Account Number 503379: (1) Any filing fees under 37 CFR 1.16 for the presentation of extra claims; (2) Any patent application processing fees under 37 CFR 1.17.

Pursuant to 37 CFR 1.143, in response to the restriction requirement dated 05/04/2006, Applicant provisionally elects with traverse to prosecute the invention of Group 1, Figures 1A and 2, related to claims 1-5, 11-13 and 17-18 and withdraws the invention of Group 2, Figures 1B and 3, respectively claims 6-10, 14-16, 19-20.

A restriction requirement is proper only when one or both of the following conditions are met: (1) the inventions are independent or distinct; or (2) there is a serious burden on the examiner if restriction is not required.¹ Applicant respectfully requests reconsideration of the restriction requirement with respect to inventions of Group 2.

¹ MPEP 803.

Any restriction requirement requires a showing as to why restriction is necessary.² If there is a serious burden on the examiner, the examiner should “show by appropriate explanation either separate classification, separate status in the art, or a different field of search.”³ The examiner has failed to do so. Because the restriction fails to comply with the rules of practice, it should be withdrawn.

Also, where “inventions are related as disclosed but are not distinct as claimed, restriction is never proper.”⁴ As the examiner is aware, restriction is NOT proper if the claimed inventions are NOT patentable (novel and unobvious) over each other.⁵ Unless the examiner is prepared to allow the invention of Group 2 over the invention of Group 1, if presented in a divisional application, the restriction should not be required.

Accordingly, Applicant respectfully requests that either the restriction requirement be withdrawn or that the examiner provide appropriate explanation for the restriction requirement.

Respectfully submitted,
CENTURY IP GROUP, INC.



Date: November 3, 2006

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CUSTOMER NO. 42698

² MPEP 808.

³ MPEP 803.

⁴ MPEP 806.

⁵ MPEP 802.01.